

1 BILL NO. S-82-11-10

2 SPECIAL ORDINANCE NO. S- 214-82

3 AN ORDINANCE approving Street Improvement
4 Resolution No. 5940-82, 1982 Flood Damage
5 Repair, with Rieth-Riley Construction
6 Co., Inc., in connection with the Board of
7 Public Works.

8 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF
9 FORT WAYNE, INDIANA:

10 SECTION 1. That a certain Contract dated September 1,
11 1982, between the City of Fort Wayne, Indiana, by and through
12 its Mayor and the Board of Public Works and Rieth-Riley Construc-
13 tion Co., Inc., for:

14 1982 Flood Damage Repair in the Harrison,
15 Sherman, and Herman Area including Federal
16 Emergency Damange Survey Reports No. 041865
17 and 041866;

18 under Board of Public Works Street Improvement Resolution No.
19 5940-82, involving a total cost of Fifteen Thousand Six Hundred
20 Eight and 95/100 Dollars (\$15,608.95), all as more particularly
21 set forth in said Resolution and Contract, and which is on file
22 with the Office of the Board of Public Works and is by reference
23 incorporated herein, made a part hereof and is hereby in all
24 things ratified, confirmed and approved. Two copies of said
25 Contract are on file with the Office of the City Clerk and made
26 available for public inspection, according to law.

27 SECTION 2. That this Ordinance shall be in full force
28 and effect from and after its passage and any and all necessary
29 approval by the Mayor.

30 APPROVED AS TO FORM
31 AND LEGALITY

32 
Bruce O. Boxberger, City Attorney


Councilmember

Read the first time in full and on motion by Stier,
seconded by Crabtree, and duly adopted, read the second time
by title and referred to the Committee Charles Wicks (and the City
Plan Commission for recommendation) and Public Hearing to be held after
due legal notice, at the Council Chambers, City-County Building, Fort Wayne,
Indiana, on _____, the _____ day of
_____, 19____, at _____ o'clock _____ .M., E.S.T.

DATE: 11-9-82

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Read the third time in full and on motion by Stier,
seconded by Crabtree, and duly adopted, placed on its
passage. PASSED (LOST) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>9</u>	_____	_____	_____	_____
<u>BRADBURY</u>	<u>✓</u>	_____	_____	_____	_____
<u>BURNS</u>	<u>✓</u>	_____	_____	_____	_____
<u>EISBART</u>	<u>✓</u>	_____	_____	_____	_____
<u>GIAQUINTA</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHMIDT</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHOMBURG</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCRUGGS</u>	<u>✓</u>	_____	_____	_____	_____
<u>STIER</u>	<u>✓</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>✓</u>	_____	_____	_____	_____

DATE: 11-23-82

C. W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL)
(APPROPRIATION) ORDINANCE (RESOLUTION) NO. S-214-82
on the 23rd day of November, 1982.

ATTEST:

(SEAL)

C. W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
the 24th day of November, 1982, at the hour of
11:30 o'clock A. .M., E.S.T.

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 24th day of November
1982, at the hour of 9 o'clock A. .M., E.S.T.

Win Moses, Jr.
WIN MOSES, JR. - MAYOR

BILL NO. S-82-11-10

REPORT OF THE COMMITTEE ON PUBLIC WORKS

WE, YOUR COMMITTEE ON Public Works TO WHOM WAS REFERRED AN
ORDINANCE approving Street Improvement Resolution No. 5940-82,
1982 Flood Damage Repair, with Rieth-Riley Construction Co.,
Inc., in connection with the Board of Public Works

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE or PASS.

JAMES S. STIER, CHAIRMAN

BEN A. EISBART, VICE CHAIRMAN

VICTOR L. SCRUGGS

MARK E. GIAQUINTA

DONALD J. SCHMIDT

John
Bart Guler
Victor L. Scruggs
Mark E. Giaquinta
D. Schmidt

11-23-82
CONCURRED IN

DATE _____ CITY CLERK _____

72-96-11
9/1/82

CONTRACT

This Agreement, made and entered into this 1 day of Sept, 19 82

by and between ----- Rieth-Riley Construction Co., Inc.-----
----- 1633-72-327 N. County Line Rd., Huntertown, Ind. 46748 -----

hereinafter called "Contractor" and the City of Fort Wayne, Indiana, a municipal corporation, hereinafter called "City," under and by virtue of an act of the General Assembly of the State of Indiana, entitled "An Act Concerning Municipal Corporations," approved March 6, 1905, and all amendatory and supplementary acts thereto, WITNESSETH: That the Contractor covenants and agrees to ~~im~~^{xxx} Improvement Resolution No. 5940-82 ~~prove~~^{xxx} repair 1982 Flood Damage in the Harrison, Sherman, and Herman Area.

This Resolution includes: DSR #041865
DSR #041866

by grading and paving the roadway to a width of XX
XX

upon a foundation and with curbing as fully set out in the specifications hereinafter referred to, in a good and workmanlike manner and to the entire satisfaction of said City, in accordance with Improvement Resolution No. 5940-82 attached hereto and by reference made a part hereof.
and at the following price per lineal foot

At the following prices:

DSR #041865 Breaking Pavement	No dollars and ninety-nine cents per square yard	0.99
Stone #73	Eight dollars and twelve cents per ton	8.12
DSR #041866 Pavement Removal	One dollar and twenty cents per square yard	1.20
Hot Asphalt Concrete Base #53	Twenty-five dollars and twenty-five cents per ton	25.25
Hot Asphalt Concrete Surface A-2	Thirty-eight dollars and no cents per ton	38.00
Chip & Seal	No dollars and ninety cents per square yard	0.90
4" Concrete Sidewalk (Including Removal)	Three dollars and eighty-nine cents per square foot	3.89
Concrete Curb Type III (Including Removal)	Thirteen dollars and forty-five cents per lineal foot	13.45
Total	Fifteen thousand, six hundred and eight dollars and ninety-five cents	\$15,608.95

The Contractor hereby expressly agrees to perform all the work in the prosecution of the above described improvement according to the terms and conditions of Improvement Resolution No. 5940-82 the plans, profiles, specifications and the contractor's bid therefor on file in the office of the Department of Public Works of said City, which said resolution, profile, plans and specifications are made a part of this contract as fully and effectually as if copied herein at full length, (copies of which are attached hereto).

It is hereby agreed that no assignment of this contract shall be made without the written consent of the City; said Contractor hereby covenants and agrees that said improvement shall be finally

and in all respects completed on or before Sept. 30, 1982 and the Contractor agrees to pay and give to the City, as liquidated damages, the sum of ~~\$25,000~~ for each and every day after said date \$100.00

_____ 19____ until said work is finally completed and ready for acceptance by the City. It being also understood that in event of any conflict between this contract and the specifications, that the former shall be considered to contain the intention of the parties hereto.

It is further agreed by and between said parties, that the acceptance of the work provided for in this contract, or the payment therefor, for the whole or a part, shall not constitute a waiver on the part of the City of any of the provisions of the contract, nor shall it release said Contractor, or the sureties upon its bond for the faithful performance thereof, nor shall the acceptance be even prima facie evidence of the performance of any provisions of such contract except to the extent of entitling said Contractor to receive the price therefor. It is further understood that the failure of the City to exercise its right of inspection or rejection of material and work, or the exercise of such right shall not in any sense be considered an acceptance of any part of said work or material.

The Contractor further contracts and agrees that in the prosecution of said work all proper skill and care will be exercised, that said party will properly and fully guard all excavations and dangerous places, and will use all due and proper precautions to prevent injury to any property, person and persons, what or whomsoever. That for and during the period of the making of such improvement, and the period for which the same is to be maintained and kept in repair by the Contractor, the City shall be saved harmless from any and all liability whatsoever growing out of any injury or damage to property or persons because of any neglect or fault of the said Contractor, its agents or employees, in the execution of this contract or any matter connected therewith or related thereto and to pay any judgment with costs which may be obtained against said City, growing out of any such injury or damage.

To each of the conditions and stipulations in this contract, the undersigned bind themselves, their successors and assigns.

IN WITNESS WHEREOF, we the foregoing named parties hereunto set our hands this 1st

day of Sept., 1982

ATTEST: Sharon A. Kuse

Corporate Secretary

RIETH-RILEY CONSTRUCTION COMPANY, INC.

BY: Ross J. Cole

ITS: Area Supt

Contractor, Party of the First Part.

City of Fort Wayne, By and Through:

Robt. Indem OHS

Ray L. Collins

Its Board of Public Works and Mayor.

ATTEST:

Sandra E. Kennedy
Secretary and Clerk

R. Snodgrass

ASSOCIATE CITY ATTORNEY

The Contractor will furnish immediately a certificate from the Industrial Board of the State of Indiana that he has complied with Sections 5, 68, 69 of the Workmen's Compensation Act, approved March 14, 1929, in accordance with Section 14 of the Compensation Act (Acts 1929, page 545, being I.C. 22-3-2-1 et. seq.).

A copy of General Ordinance No. G-34-78 (as amended) concerning discriminating in employment under municipal contracts, is attached and incorporated herein by reference.

UNITED PACIFIC INSURANCE COMPANY

HOME OFFICE, TACOMA, WASHINGTON

LABOR AND MATERIAL PAYMENT BOND

The American Institute of Architects, AIA Document A311, February 1970 Edition.

THIS BOND IS ISSUED SIMULTANEOUSLY WITH PERFORMANCE BOND IN FAVOR OF THE OWNER CONDITIONED ON THE FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT

KNOW ALL MEN BY THESE PRESENTS: that (Here insert full name and address or legal title of Contractor)

Rieth-Riley Construction Co., Inc.
311 W. Madison St.
Goshen, IN 46526

as Principal, hereinafter called Principal, and, UNITED PACIFIC INSURANCE COMPANY, a corporation of the State of Washington, with its Home Office at Tacoma, Washington, as Surety, hereinafter called Surety, are held and firmly bound unto (Here insert full name and address or legal title of Owner)

Board of Public Works

City County Bldg., One Main St., Fort Wayne, IN 46802

as Oblige, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the amount of **Fifteen**

thousand six hundred eight and 95/100 - - - - Dollars (\$15,608.95)

for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated **August 10** **19 82**, entered into a contract with Owner for

Resolution 5940-82 - pavement removal, concrete curb and sidewalk, HAC base and surface chip and seal to Harrison, Sherman and Herman area DSR #041865 and DSR #041866

in accordance with Drawings and Specifications prepared by (Here insert full name and address or legal title of Architect)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

... commenced hereunder by any claimant:

... than one having a direct contract with the Principal, shall have given written notice to any two of the
... owner, or the Surety above named, within ninety (90) days after such claimant did or performed the last
... furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount
... party to whom the materials were furnished, or for whom the work or labor was done or performed. Such
... the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal,
... where an office is regularly maintained for the transaction of business, or served in any manner in which
... in the state in which the aforesaid project is located, save that such service need not be made by a public

... of one (1) year following the date on which Principal ceased work on said Contract, it being understood,
... limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall
... to be equal to the minimum period of limitation permitted by such law.

... in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the
... is situated, or in the United States District Court for the district in which the project, or any part thereof,
... and elsewhere.

... of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, in-
... by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for
... be presented under and against this bond.

10th day of August 19 82

Rieth-Riley Construction Co., (Sole)
(Principal)

(Witness)

By

Ross J. Cole
Ross J. Cole Supt.

(Title)

UNITED PACIFIC INSURANCE COMPANY

(Witness)

Leonard E. Northrup, C.P.C.
Leonard E. Northrup Attorney-in-fact

HOME OFFICE, TACOMA, WASHINGTON

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, That the UNITED PACIFIC INSURANCE COMPANY, a corporation duly organized under the laws of the State of Washington, does hereby make, constitute and appoint Leonard E. Northrup of Goshen, Indiana

its true and lawful Attorney-in-Fact, to make, execute, seal and deliver for and on its behalf, and as its act and deed any and all bonds and undertakings of Suretyship,

and to bind the UNITED PACIFIC INSURANCE COMPANY thereby as fully and to the same extent as if such bonds and undertakings and other writings obligatory in the nature thereof were signed by an Executive Officer of the UNITED PACIFIC INSURANCE COMPANY and sealed and attested by one other of such officers, and hereby ratifies and confirms all that its said Attorney(s)-in-Fact may do in pursuance hereof.

This Power of Attorney is granted under and by authority of Article VII of the By-Laws of UNITED PACIFIC INSURANCE COMPANY which became effective September 7, 1978, which provisions are now in full force and effect, reading as follows:

ARTICLE VII - EXECUTION OF BONDS AND UNDERTAKINGS

1. The Board of Directors, the President, the Chairman of the Board, any Senior Vice President, any Vice President or Assistant Vice President or other officer designated by the Board of Directors shall have power and authority to (a) appoint Attorneys-in-Fact and to authorize them to execute on behalf of the Company, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and (b) to remove any such Attorney-in-Fact at any time and revoke the power and authority given to him.

2. Attorneys-in-Fact shall have power and authority, subject to the terms and limitations of the power of attorney issued to them, to execute and deliver on behalf of the Company, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof. The corporate seal is not necessary for the validity of any bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof.

3. Attorneys-in-Fact shall have power and authority to execute affidavits required to be attached to bonds, recognizances, contracts of indemnity or other conditional or obligatory undertakings and they shall also have power and authority to certify the financial statement of the Company and to copies of the By-Laws of the Company or any article or section thereof.

This power of attorney is signed and sealed by facsimile under and by authority of the following Resolution adopted by the Board of Directors of UNITED PACIFIC INSURANCE COMPANY at a meeting held on the 5th day of June, 1979, at which a quorum was present, and said Resolution has not been amended or repealed:

"Resolved, that the signatures of such directors and officers and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached."

Asst.

IN WITNESS WHEREOF, the UNITED PACIFIC INSURANCE COMPANY has caused these presents to be signed by its Vice President, and its corporate seal to be hereto affixed, this 12th day of September 1980.

UNITED PACIFIC INSURANCE COMPANY

Asst. W. F. Brunner
Vice President

STATE OF Pennsylvania
COUNTY OF Philadelphia } ss.



On this 12th day of September, 1980, personally appeared W. F. Brunner

to me known to be the Vice-President of the UNITED PACIFIC INSURANCE COMPANY, and acknowledged that he executed and attested the foregoing instrument and affixed the seal of said corporation thereto, and that Article VII, Section 1, 2, and 3 of the By-Laws of said Company, and the Resolution, set forth therein, are still in full force.

My Commission Expires:

May 7, 1984

Patricia C. Croft
Notary Public in and for State of Pennsylvania
Residing at Philadelphia

I, P. D. Crossetta, Assistant Secretary of the UNITED PACIFIC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by said UNITED PACIFIC INSURANCE COMPANY, which is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Company this 10th day of August 1982

Assistant Secretary P. D. Crossetta

UNITED PACIFIC INSURANCE COMPANY

HOME OFFICE, TACOMA, WASHINGTON

PERFORMANCE BOND

The American Institute of Architects, AIA Document A311, February 1970 Edition.

KNOW ALL MEN BY THESE PRESENTS: that (Here insert full name and address or legal title of Contractor)

Rieth-Riley Construction Co., Inc.

311 W. Madison St.

Goshen, IN 46526

as Principal, hereinafter called Contractor, and, UNITED PACIFIC INSURANCE COMPANY, a corporation of the State of Washington, with its Home Office at Tacoma, Washington, as Surety, hereinafter called Surety, are held and firmly bound unto (Here insert full name and address or legal title of Owner)

Board of Public Works

City County Bldg. One Main St., Fort Wayne, IN 46802

as Obligor, hereinafter called Owner, in the amount of Fifteen thousand six hundred eight and 95/100

----- Dollars (\$ 15,608.95), for the payment whereof Contractor

and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents

WHEREAS, Contractor has by written agreement dated August 10 1982, entered into a contract with Owner for

Resolution 5940-82 - pavement removal, concrete curb and sidewalk,
HAC base and surface chip and seal to Harrison, Sherman and
Herman area DSR #041865 and DSR #041866

in accordance with Drawings and Specifications prepared by (Here insert full name and address or legal title of Architect)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be; and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

1) Complete the Contract in accordance with its terms and conditions, or
2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of Owner.

Signed and sealed this

10th

day of August

1982

(Witness)

Rieth-Riley Construction Co., Inc. (Seal)

Ross J. Gole (Principal)

ROSS J. Gole (Title) Supt.

UNITED PACIFIC INSURANCE COMPANY

Leonard E. Northrup, C.P.C.U.,
Leonard E. Northrup, Attorney-in-fact

(Witness)

TITLE OF ORDINANCE

Resolution #5940-82, 1982 Flood Damage Repair

DEPARTMENT REQUESTING ORDINANCE

Board of Public Works

5-82-11-10

SYNOPSIS OF ORDINANCE

Repair 1982 Flood Damage in the Harrison, Sherman, and Herman Area.

This Resolution includes Federal Emergency Damage Survey Report

#041865, and #014866. Rieth-Riley Construction Co., Inc.

was awarded this contract.

Prior approval obtained August 3, 1982.

EFFECT OF PASSAGE

to repair damages occurred by flood

EFFECT OF NON-PASSAGE

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$15,608.95

ASSIGNED TO COMMITTEE